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**DEC 13 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Chu et al. :  
Application No. 10/039,383 : DECISION GRANTING  
Filed: 17 December, 2001 : PETITION  
Attorney Docket No. AM100249 :

This is a decision on the twice renewed petition, filed on 1 November, 2004, styled under 37 CFR 1.10(d), which is treated as a petition requesting reconsideration of the decision mailed on 1 September, 2004, and requesting that the above-identified application be accorded a filing date of 17 December, 2001, rather than the presently-accorded filing date of 8 January, 2002.

The petition is granted.

Petitioners allege that the application was deposited in Express Mail service on 17 December, 2001.

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be

accorded the Office receipt date as the filing date.<sup>1</sup>  
(emphasis added)

Paragraph (c) of 37 CFR 1.10 states that:

Any person filing correspondence under 37 CFR 1.10 that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the papers or fees that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the

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<sup>1</sup>See 37 CFR 1.6(a).

correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS. Any statement submitted in support of such a showing pursuant to this paragraph must be a verified statement if made by a person other than an employee of the USPS or a practitioner as defined in § 10.1(r) of this chapter.

The renewed petition is accompanied by a letter from Dennis M. Allocco, Postmaster of the Morristown, NJ Post Office stating that he has been provided evidence by petitioners which suggests that Express Mail shipment EL783017014US was deposited with the USPS on 17 December, 2001.

In view of the evidence present in the file, it is concluded that the correct date of deposit in Express Mail is 17 December, 2001. Therefore, the application is entitled to a filing date of 17 December, 2001.

The address listed on the petition is different than the correspondence address of record. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

The application is being referred to the Office of Initial Patent Examination for correction of the filing date to 17 December, 2001, and issuance of a corrected Filing Receipt.

Application No. 10/039,383

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Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

A handwritten signature in dark ink, appearing to read "D. Wood", is positioned above the printed name.

Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

cc: Anne M. Rosenblum  
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